

OPEN MEETING ITEM

COMMISSIONERS
BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



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ARIZONA CORPORATION COMMISSION

2014 JUN 18 P 2:56

DATE: JUNE 18, 2014

DOCKET NO.: RR-03639A-14-0078

ARIZONA CORP COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

ORIGINAL

Enclosed please find the recommendation of Administrative Law Judge Scott M. Hesla. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD COMPANY
(UPGRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JUNE 27, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

JULY 22, 2014 and JULY 23, 2014

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JUN 18 2014

DOCKETED BY

Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 BOB STUMP - Chairman
4 GARY PIERCE
5 BRENDA BURNS
6 BOB BURNS
7 SUSAN BITTER SMITH

8 IN THE MATTER OF THE APPLICATION OF
9 THE ARIZONA DEPARTMENT OF
10 TRANSPORTATION TO UPGRADE AN
11 EXISTING CROSSING OF THE UNION PACIFIC
12 RAILROAD COMPANY AT BROADWAY ROAD
13 IN THE CITY OF TEMPE, MARICOPA COUNTY,
14 ARIZONA, AAR/DOT NO. 741-565L.

DOCKET NO. RR-03639A-14-0078

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: May 29, 2014

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Scott M. Hesla

14 APPEARANCES: Mr. James Redpath, Assistant Attorney General,
15 Transportation Section, on behalf of the Arizona
16 Department of Transportation;

17 Mr. W. Reed Campbell, Beaugureau, Hancock, Stoll &
18 Schwartz, P.C., on behalf of the Union Pacific Railroad
19 Company; and

20 Mr. Charles Hains, Staff Attorney, Legal Division on
21 behalf of the Safety Division of the Arizona Corporation
22 Commission.

23 **BY THE COMMISSION:**

24 * * * * *

25 Having considered the entire record herein and being fully advised in the premises, the
26 Commission finds, concludes, and orders that:

27 **FINDINGS OF FACT**

28 **Procedural History**

1. On March 4, 2014, the Arizona Department of Transportation ("ADOT") filed with
the Arizona Corporation Commission ("Commission") an application for approval for the Union

1 Pacific Railroad Company ("Railroad") to upgrade an existing crossing at Broadway Road in the City
2 of Tempe ("City"), Maricopa County, Arizona at AAR/DOT No. 741-565L ("Application").

3 2. On March 21, 2014, a Procedural Order was issued establishing various filing dates
4 and scheduling a hearing for May 29, 2014.

5 3. On May 2, 2014, ADOT filed documentation that it had provided public notice of the
6 application and hearing thereon.

7 4. On May 15, 2014, the Commission's Safety Division, Railroad Safety Section
8 ("Staff") filed a Staff Memorandum recommending approval of the application.

9 5. On May 29, 2014, a full public hearing was convened, as scheduled. ADOT, the
10 Railroad, and Staff appeared through counsel. At the conclusion of the hearing, the matter was taken
11 under advisement pending submission of a Recommended Opinion and Order to the Commission.

12 **ADOT's Application**

13 6. Prior to the filing of the Application, representatives of ADOT, the City, the Railroad,
14 and Staff participated in several diagnostic review meetings of the proposed upgrades for the
15 crossing. All parties who were present at these meetings were in agreement that the proposed
16 enhancements would improve safety at the crossing.

17 7. In its Application, ADOT is seeking Commission approval to upgrade the existing at-
18 grade crossing at Broadway Road, a six lane paved roadway, which consists of two westbound lanes,
19 three eastbound lanes, and one two-way center left turn lane. The proposed improvements will
20 replace the existing flashing lights, automatic gates, and cantilevers with two new automatic gates
21 with LED flashing lights on the outside curbs of Broadway Road, two new automatic gates with LED
22 flashing lights which will be located on a new raised median, and one cantilever with LED flashing
23 lights for eastbound traffic. Additionally, constant warning time circuitry will also be installed. The
24 City is installing the raised median, constructing sidewalks, and restriping the roadway in advance of
25 the crossing.

26 8. The proposed upgrade of the Broadway Road crossing was approved by the
27 Commission in Decision No. 70481 (September 3, 2008) as part of the 2008 Annual Array to utilize
28 federal funding pursuant to 23 U.S.C. § 130 ("Section 130"). Section 130 projects are used to

1 eliminate hazards to pedestrians and highway vehicles at public railroad crossings which are not
2 primarily for the benefit of the Railroad.

3 9. Mr. Jason Pike, ADOT's Railroad Coordinator for Section 130 projects, testified in
4 support of the Application.

5 10. Mr. Pike testified that the proposed upgrades to the Broadway Road crossing are
6 consistent with similar crossings located throughout the state and are in the public interest. (Tr. 8:19-
7 25). Mr. Pike further testified that the project will be funded entirely by the Federal Highway
8 Administration ("FHWA") pursuant to Section 130. (Tr. 10:4-6).

9 11. Mr. Alexander Popovici, the Railroad's Project Manager, testified that crossings of
10 this nature are required to have one set of flashing lights per each lane of travel. (Tr. 12:6-8). Mr.
11 Popovici explained that the crossing will comply with this requirement because: the two sets of
12 flashing LED lights affixed to the automatic gates will cover the two lanes of travel in the westbound
13 direction; and the three sets of flashing LED lights affixed to the automatic gates and cantilever will
14 cover the three lanes of travel in the eastbound direction. (Tr. 12:6-20).

15 12. Mr. Chris Watson, Assistant Supervisor of Railroad Safety for the Commission,
16 testified that he had prepared the Staff Memorandum which describes the nature of ADOT's
17 proposed upgrade at the Broadway Road crossing. (Tr. 14:12-13).

18 13. Mr. Watson testified that the improvements being made to the Broadway Road
19 crossing are consistent with similar crossings located throughout Arizona. (Tr. 16:6-9). Testifying
20 further, Mr. Watson stated that approval of the proposed upgrades would be in the public interest.
21 (Tr. 16:10-12).

22 14. According to the Staff Memorandum, construction of a grade separated crossing is not
23 warranted due to its proximity to the Arizona State University campus and the overall high cost to
24 construct a grade separated crossing. In addition, Mr. Watson testified that the crossing did not meet
25 any of the nine criteria utilized by FHWA for consideration of grade separation. (Tr. 16:13-21).

26 15. In its Staff Memorandum, Staff states that it does not recommend closing the crossing.
27 According to Staff, crossing closure would have a negative impact on surrounding businesses and
28 residents.

16. Staff recommends that the Application be approved. (Tr. 16:22-24).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. The installation of the crossing upgrade is necessary for the public's convenience and safety.

4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as recommended by Staff.

5. After the installation of the improvements at the Broadway Road crossing, the Union Pacific Railroad Company should maintain the crossing in accordance with A.A.C. R14-5-104.

ORDER

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application is hereby approved.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the crossing upgrade as described in the Application within two years of the effective date of this Decision.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the Commission, in writing, within ten days of both the commencement and completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

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1 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific
2 Railroad Company shall maintain the crossing in compliance with A.A.C. R14-5-104.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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6
7 CHAIRMAN

COMMISSIONER

8
9 COMMISSIONER

COMMISSIONER

COMMISSIONER

10
11 IN WITNESS WHEREOF, I, JODI JERICH, Executive
12 Director of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of Phoenix,
15 this _____ day of _____ 2014.

16 JODI JERICH
EXECUTIVE DIRECTOR

17 DISSENT _____

18
19 DISSENT _____
20 SMH:ru

1 SERVICE LIST FOR:

UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO.:

RR-03639A-14-0078

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